

The opinion in support of the decision being entered
today was not written for publication and is
not binding precedent of the Board

Paper No. 23

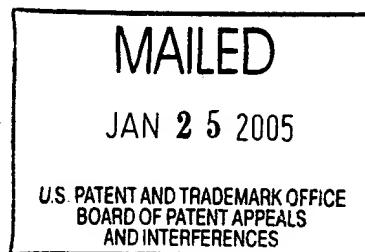
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOSE DE LA TORRE-BUENO, PH.D.

Appeal No. 2004-2189
Application 09/542,091

ON BRIEF



Before THOMAS, BARRETT, and DIXON, Administrative Patent Judges.
THOMAS, Administrative Patent Judge.

DECISION ON APPEAL

Appellant has appealed to the Board from the examiner's
final rejection of claims 1-20 and 23-26.

Representative claim 1 is reproduced below:

1. A method comprising:
generating a compressed medical image from a source medical
image at a first location;

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transmitting the compressed medical image to a remote view station at a second location for display;

decompressing the compressed image file;

selecting a region of the decompressed medical image at the second location; and

applying image analysis operations to a region of the source medical image at the first location corresponding to the selected region of the decompressed medical image.

The following references are relied on by the examiner:

Novik	5,432,871	July 11, 1995
Echerer et al. (Echerer)	5,740,267	Apr. 14, 1998
Wood et al. (Wood)	5,851,186	Dec. 22, 1998

Claims 1-20 and 23-26 stand rejected under 35 U.S.C. § 103. As evidence of obviousness, the examiner relies upon Novik in view of Echerer as to claims 1, 3-15, 17-20, 23, 25 and 26, with the addition of Wood as to claims 2, 16 and 24.

Rather than repeat the positions of the appellant and the examiner, reference is made to the brief and reply brief for appellant's positions, and to the final rejection and answer for the examiner's positions.

OPINION

For the reasons set forth by the examiner in the final rejection and answer, we sustain the rejections of all claims on appeal under 35 U.S.C. § 103. Since appellant presents no arguments in the principal brief on appeal as to any claim on appeal, we take for our consideration the subject matter of independent claim 1 on appeal. This is consist with appellant's grouping of the claims at the bottom of page 3 of the principal brief on appeal where it is stated that "claims 2-20 and 23-26 rise and fall along with independent claim 1."

Although no specific reference is made to representative claim 1 on appeal, it appears that appellant in the principal brief on appeal is arguing in essence the subject matter of the last stated clause of this claim, the feature of "applying image analysis operations to a region of the source medical image at the first location corresponding to the selected region of the decompressed medical image." Appellant's positions in the brief and reply brief do not contest the examiner's correlation to Novik of the generating, transmitting, decompressing and selecting clauses of this representative claim.

At the outset, we agree in general with the examiner's first observation at page 3 of the answer that the features argued in the principal brief on appeal relate to the features that are not recited in representative claim 1 on appeal. Rather than asserting that the appellant has mischaracterized Novik's teachings as done by the examiner at page 3 of the answer, we consider appellant's views to be an incomplete consideration of the teachings and suggestions in Novik.

Although we agree with the examiner's basic views that it would have been obvious for the artisan to have incorporated the teachings of Echerer into Novik to particularize or enhance upon the teachings already taught in this reference, we generally agree with the examiner's combinability analysis at pages 3 and 4 of the final rejection as to claim 1 and at pages 6-8 of the final rejection as to the claim 23 analysis which mirrors that of claim 1. Whereas the examiner indicates at page 3 of the final rejection that Novik teaches image processing functions and does not specifically teach image analysis, the examiner re-characterizes Novik's teachings at page 3 of the answer as performing image-processing functions on the data "which arguable [arguably] could be called image analysis (column 9, lines 22-

34). However, Echerer et al. is a better teaching of performing true image analysis (column 10, lines 32-34 and column 17, lines 37-50)."

From our study of Novik we agree with the examiner's views as stated here and to the point of concluding that Novik alone either teaches or strongly suggests the argued feature of broadly performing image analysis operations in the data collection and transmission station 102 in Figure 1 of this reference. We make reference to the following locations of Novik in reaching this conclusion: lines 6-10 of the abstract; the summary of the invention at column 2, lines 39-42, 54-64 and column 4, lines 2-20; column 5, lines 49-63; column 8, lines 3-15 and 29-33 and column 9, lines 2-5.

In addition to the data analysis performed by the user at the remote site 104 in Figure 1 of Novik, these identified portions not only indicate that the user is capable of making image capturing parameter changes or modifications as desired, there are strong suggestions if not specific teachings of the ability of the user to direct that the data collection and transmission station 102 perform broadly defined "image analysis operations" as set forth at the end of representative claim 1 on

appeal. The spectral response changes discussed at the top of columns 4 and column 9 clearly would be inclusive from an artisan's perspective of broadly defined image analysis operations. The ability of the system to perform spatial and amplitude resolution modifications as taught at the top of column 8 is also representative of broadly defined image analysis operations. The ability of the user to also change the quality factor Q or the degree of compressibility of the transmission depending on what level of detail is required also suggests the ability to perform broadly defined image analysis operations in Novik's data collection and transmission station 102.

Thus, on the basis of Novik alone, appellant's basic thrust of the arguments in the brief and reply brief that the reference's relied upon by the examiner do not teach the feature recited in representative independent claim 1 on appeal of performing image analysis operations to a selectable region at the source medical image location is not well-founded. It follows that we do not agree with appellant's views expressed at page 5 of the principal brief on appeal that there is no reason to perform image analysis or image processing operations at the image server in Novik where the teachings and suggestions we have just isolated indicate otherwise.

Although appellant recognizes that Echerer does disclose performing image processing operations in the sense of the subject matter issue at the end of representative claim 1 on appeal, the inference we derive from the appellant's arguments is that these are only performed at a source site. While this may be true according to the express teachings of Echerer or the reasonable inferences the artisan would be able to derive from them, Echerer's discussion of the prior art at column 3, lines 25-30 indicate that it was known in the art to transmit scanned images to various locations. Certainly, within the context of the ability of Echerer's teachings to perform separately and store separately image enhancement, they obviously would have been performed at the source site such as the data collection and transmission site 102 in Figure 1 of Novik.

Moreover, the examiner's view is basically correct in our judgement that Echerer embellishes upon the nature and type of image processing and image analysis operations that may be performed on medical images such that the user is given the full capabilities to perform both manual and automatic image analysis-type operations as expressed best in the Summary of the Invention at column 4 of Echerer. Of those portions relied upon by the

examiner in Echerer in the Final rejection, we find most compelling those identified portions at the middle of column 9 of Echerer and all the mathematical operations noted in the discussion beginning at the middle of column 17 of this reference.

The foregoing analysis should make it clear to the reader that we do not view Novik as clearly teaching away from any of the claimed features that are set forth in representative claim 1 on appeal as asserted initially at the bottom of page 5 of the principal brief on appeal. Among both references relied upon by the examiner in the first stated rejection, we find no clear discouragement to the artisan from following the paths set out as appellant has done in the subject matter of representative claim 1 on appeal nor would the artisan be lead in a direction divergent from the path that was taken by appellant. If anything the opposite is true.

Appellant has not contested the examiner's reasons of combinability first expressed at the top of page 4 of the final rejection that the disclosures of both Novik and Echerer are directed towards solving the problem of the present invention by providing image quality data without requiring huge amounts of data storage space and transmission time and bandwidth as well.

Lastly, appellant's image analysis argument in the paragraph bridging pages 1 and 2 of the reply brief is not well received. There is nothing in the arguments presented that is presented in such a manner that the features argued are recited in representative independent claim 1 on appeal. Those features argued are also recognized to be old in the art anyway in accordance with the discussion at specification pages 1 and 2 discussing the admitted prior art. The ability of Echerer's system to compute a score has been identified by the examiner at the bottom of page 4 of the answer, which is an uncontested feature anyway.

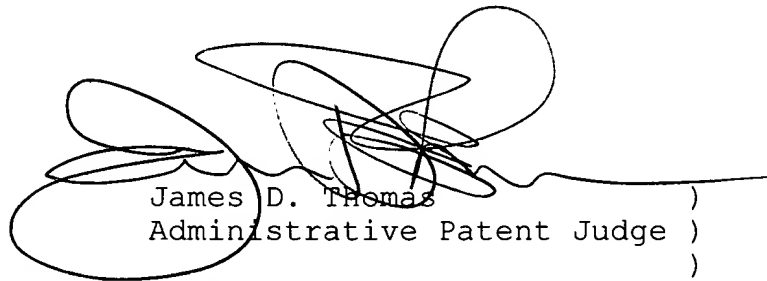
The second stated rejection is merely commented upon at the bottom of page 6 of the principal brief on appeal relying for patentability on the reasons advanced for the features already discussed in representative independent claim 1 on appeal. Appellant does not present any arguments contesting the teachings of Wood relied upon by the examiner and its combinability with Novik and Escherer.

In view of the foregoing, the decision of the examiner rejecting claims 1-20 and 23-26 under 35 U.S.C. § 103 is affirmed.

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No time period for taking any subsequent action in
connection with this appeal may be extended under 37 CFR
§ 1.136(a).

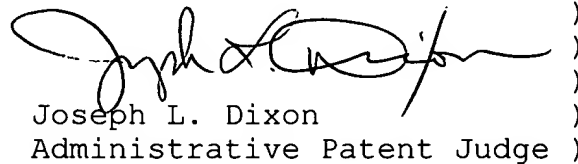
AFFIRMED



James D. Thomas)
Administrative Patent Judge)



Lee E. Barrett)
Administrative Patent Judge)



Joseph L. Dixon)
Administrative Patent Judge)

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